

ARC 5540B

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These proposed amendments implement 2006 Iowa Acts, House File 2789, which revised the hourly rate paid for indigent defense cases, and 2006 Iowa Acts, Senate File 2304, which modified the process for review and payment of non-attorney fee claims in juvenile cases, and the amendments modify other claims procedures to streamline the submission, review and payment process.

Interested persons may make written comments or suggestions on the proposed amendments on or before November 30, 2006. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087, faxed to (515)281-7289, or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on November 30, 2006, at 9 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should advise the State Public Defender of specific needs.

These amendments are intended to implement Iowa Code chapters 13B, 232, and 815.

The following amendments are proposed.

ITEM 1. Amend rule 493—7.1(13B,815) as follows:

Adopt the following new definition in alphabetical order:

"Claims for other professional services" means claims submitted by nonattorneys, including but not limited to investigators, foreign language interpreters, experts, certified shorthand reporters, and persons conducting medical or psychological evaluations.

Amend the following definitions:

"Clerical activities" means activities including, but not limited to, opening files; closing files; making photocopies; ~~mailing~~; opening mail, ~~sending mail~~; sending cover letters; transmitting copies of documents to a client, other party or clerk of court; sending a fax; picking up or delivering documents, internal file memos or instructions to staff; scheduling; or billing.

"Date of service" means, for adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date warrant was issued for the client, or the date of the attorney's withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or a warrant being issued. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims or claims for other professional services, "date of service" means the last date on the itemization. For juvenile claims, "date of service" means the date of filing of an order as a result of the dispositional hearing or most recent review hearing, the date of the attorney's withdrawal from a case that was not dismissed, the date jurisdiction is waived to adult court, the date on which venue is changed, or the date of dismissal. For noncontract appellate claims, "date of service" means the date on which the procedendo issues or the case is disposed of or dismissed. For contract ~~attorneys~~ appellate claims, "date of service" means the date of filing of the page-proof brief or final brief. For claims filed as a result of a notice of action letter, "date of service" means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, "date of service" means the date of the order.

"Travel time," which is payable from the indigent defense fund, means reasonable and necessary time spent by the attorney for travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed to a different county for the convenience of the court;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a ~~criminal~~ criminal case if the place of detention is other than the county seat of the county in which the ~~crime occurred~~ action is pending;

5. To and from the location of the placement of a child in a juvenile case if the attorney guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;

6. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;

7. To and from a court of appeals or supreme court argument not held in Des Moines;

8. To and from the location where the deposition of an expert witness is being taken; or

9. Other travel for which authorization is obtained from the state public defender.

ITEM 2. Amend rule 493—12.1(13B,815) by adding the following new subrule:

12.1(3) The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense), and consistent with good stewardship of public appropriations.

ITEM 3. Amend subrule 12.2(1), paragraph “a,” as follows:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court, postconviction relief and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for work performed after the granting of an application for discretionary review or for interlocutory appeal, or if full briefing is ordered following a petition on appeal, must be submitted on an Appellate form. The claim forms may be obtained from the clerk of district court or downloaded from the state public defender Web site: www.spd.state.ia.us. Claims submitted using forms downloaded from the Web site that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission.

ITEM 4. Amend subrule 12.2(1), paragraph “e,” by adding the following new subparagraph (5):

(5) If the itemization does not indicate the date of the disposition of the case, a copy of the dispositional order must be attached to the claim.

ITEM 5. Amend subrule 12.2(6) as follows:

12.2(6) For cases to which the attorney is appointed after June 30, 2004, claims that are not timely will be denied. Time billed on claims which are denied, or which could have been denied, pursuant to this subrule may be included in subsequent claims if timely submitted with regard to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding shall not be deemed the "same case" as the underlying proceeding.

ITEM 6. Amend subrule 12.2(8) as follows:

12.2(8) Claims for clerical activities, overhead, preparation of the fee claim ~~and or~~ itemization of services; for obtaining, preparing, or reviewing an application or order to exceed the fee limitations; or for preparation of a motion to review and or order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney's appointment and will be denied.

ITEM 7. Amend subrule 12.3(3) as follows:

12.3(3) Specific cases. Interim claims in Class A ~~or B~~ felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

ITEM 8. Amend subrule 12.3(4) as follows:

12.3(4) Change of employment. If an attorney is changing law firms, the attorney may submit ~~an interim a~~ claim to end billing at one firm and start billing at the new firm. Both If payments are to be made to someone other than the law firm which the attorney is leaving, both the attorney and the law firm must advise the state public defender in writing that the attorney is leaving the firm and ~~what where the payments up to a specific date should be made to the law firm.~~

ITEM 9. Amend rule 493—12.5(13B,815) as follows:

493—12.5(13B,815) Appellate contracts. Subject to the provisions of this rule, an attorney who has entered into a contract with the state public defender shall be paid ~~\$1,500~~ \$1,750 for each appellate case to which the attorney is appointed. ~~One thousand dollars~~ Following submission of the attorney's proof brief, \$1,200 is payable ~~following submission of the attorney's proof brief; the remainder, shall be paid~~ after the final brief is filed.

ITEM 10. Amend subrule 12.5(2) as follows:

12.5(2) ~~Juvenile cases/joiner. In a juvenile appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, involving more than one appellant or appellee, where an attorney joins in all~~

~~or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case. In a juvenile appellate case to which the attorney was appointed after June 30, 2006, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$550 in the case. For juvenile appeals, only delinquency appeals are covered by an appellate contract. All other juvenile appeals are subject to subrule 12.6(3).~~

ITEM 11. Amend subrule 12.5(3) as follows:

~~12.5(3) Juvenile petition on appeal. In a juvenile case in which a petition on appeal is filed, the petition is not considered an appeal for purposes of this rule. The trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the trial court shall appoint an attorney pursuant to the Iowa Code. An attorney fee claim for services subsequent to such order must be submitted on an Appellate form. Applications for further review. In a case in which an application for further review is filed, the contract amount will be increased by the reasonable amount of time necessary for the further review, payable at \$55 per hour.~~

ITEM 12. Amend subrule 12.5(4) as follows:

~~12.5(4) Unusually complicated cases. In an appeal that is unusually complicated, the attorney may negotiate with the state public defender may approve for a fee in excess of the fees contract amount contained in rule 12.5(13B,815). However, this rule subrule does not require that the state public defender agree to pay a higher fee in any particular case. A determination that a case is "unusually complicated" shall be made by the state public defender based on the information provided by the attorney at the time of submission of the claim showing. The term "unusually complicated" as used in this rule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. A case in which an application for further review is filed or a case in which oral argument is held at a location other than Des Moines is generally deemed to be "atypical" as that term is used in this rule. An attorney whose claim is partially denied pursuant to this subrule may seek review of the state public defender's action.~~

ITEM 13. Amend subrule 12.6(1) as follows:

12.6(1) Adult cases. The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$15,000 <u>\$18,000</u>
Class B felonies	\$3,500 <u>\$3,600</u>
Class C felonies	\$1,200
Class D felonies	\$1,000 <u>\$1,200</u>
Aggravated misdemeanors	\$1,000 <u>\$1,200</u>
Serious misdemeanors	\$500 <u>\$600</u>
Simple misdemeanors	\$250 <u>\$300</u>
Simple misdemeanor appeals to district court	\$250
Contempt/show cause proceedings	\$250
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation	\$250
Extradition	\$250

Postconviction relief—the greater of \$1,000 or one-half of the fee limitation for the conviction from which relief is sought.

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be ~~\$1,000~~ \$1,200 even if there were more than one separate occurrence. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

ITEM 14. Amend subrule 12.6(2) as follows:

12.6(2) Juvenile cases._The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,000 <u>\$1,100</u>		
Child in need of assistance (CINA)			
(through disposition)	\$1,000 <u>\$1,100</u>		
Termination of parental rights (TPR)			
(through disposition)	\$1,500 <u>\$1,650</u>		
Juvenile court review and other			
postdispositional court hearings	\$300		
Judicial bypass hearings	\$150		
Juvenile commitment hearings	\$150		
Juvenile petition on appeal			
(CINA or TPR)	\$500 <u>\$550</u>		
Motion for further review after			
petition on appeal	\$250 <u>\$275</u>		

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code. The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B, 815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is ~~\$1,000~~ \$1,100 for all four proceedings, not ~~\$1,000~~ \$1,100 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to ~~\$1,000~~ \$1,100 for the child in need of assistance case and up to ~~\$1,500~~ \$1,650 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain ~~an~~ a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal,

must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

ITEM 15. Amend subrule 12.6(3) as follows:

12.6(3) _Appellate cases. Except as provided in this subrule, the state public defender establishes a fee limitation of ~~\$2,000~~ \$2,200 for combined attorney time and paralegal time for all activities in appellate cases filed with the Iowa supreme court.

ITEM 16. Amend subrule 12.6(3) by adding the following new paragraph “c”:

c. In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing and the trial court appoints the trial attorney to pursue the full briefing, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether subsequent appellate claims exceed the fee limitations.

ITEM 17. Amend subrule 13.2(6) as follows:

13.2(6) Submission of claims. Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

ITEM 18. Amend subrule 13.2(7) as follows:

13.2(7) Claims from state employees. Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

ITEM 19. Rescind subrule 13.2(8).

ITEM 20. Rescind rule 493—13.6(815).